82-2000

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ARTHUR GREEN, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
PETITIONER,

VS.

JOSEPH GREEN AND MARY (GREEN) STERN,
RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

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QUESTIONS PRESENTED FOR REVIEW

1. *Shall the decisions of the courts of New Jersey on subject case be permitted to stand in view of their repugnance to the guarantees of the respective due process clauses of the State and Federal Constitutions?*

-----in that, trial and appellate courts denied me hearing as a *pro se* to present evidence of perjury and other false testimony by respondents and their attorney; to have the caveat heard in all its subparts which the courts consistently denied; to rectify the courts' denial of my right of rebuttal, to refute infamous allegations by the adversaries; *inter alia.*

2. *Can the decisions of the courts of New Jersey on subject case be permitted to stand when a party has been denied Equal Protection, guaranteed by the clauses of the several Federal Statutes and Constitution of the United States?*

-----or, do not the guarantees under the Equal Protection clauses of Federal Statutory and

Constitutional Law also apply to citizens who are *pro se* before the courts?

As I have been able to ascertain by a comprehensive study of the Rules of Court of the Courts of New Jersey (West Publishing Co., St. Paul, Minn.), the rules represent an equity to the parties of a court conflict. The Rules of Court of a State are the Law of the Court where Due Process is to be observed and where Equal Protection under the Law (or Rules) is to be maintained.

Under Federal Question doctrine, are the Rules of Court of this State, or those of our sister States and Territories, coveted by the guarantees of Due Process and Equal Protection of the Law as Federal and State Constitutions prescribe?

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APPENDIX:

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Opinions Below

The January 17, 1983, final order without opinion of the Supreme Court of New Jersey denying certification and the opinion of the Appellate Division, Superior Court, rendered October 6, 1982, are set forth in full in the Appendix to this Petition (1a and 2a, resp.)

Jurisdiction

The order of the Supreme Court of New Jersey denying certification entered on January 17, 1983, finalized the October 6, 1982, judgments of the Appellate Division, Superior Court. The jurisdiction of this Court is invoked under statute 28 U.S.C. §1257(3).

Constitutional Provisions and Statutes Involved

1. Section 1., Fourteenth Amendment, Constitution of the United States (in relevant part)

> "....; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. 42 U.S.C. §1983 (in relevant part):

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to subjected, any citizen of the United States or other person within jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. ....."

3. 42 U.S.C. §1985(2) (in relevant part):

"(2).....; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; ....., the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

4. The Fourteenth Amendment is invoked by way of the Fifth Amendment to the Constitution of the United States which is cited (in relevant part):

"No person.....shall be deprived of life, liberty or property, without due process of law;....."

INDEX TO AUTHORITIES CITED

CASES: Page:

Other Authorities

FEDERAL QUESTION BROUGHT TO COURTS BELOW

It must appear, either in direct terms or by necessary intendment, that Federal Question was in fact brought to notice of court and decided by it. Federal Question had to be raised in state court before final decision.

I brought the matter, under the caption: "Denials of Due Process of Law" in my Petition for Certification, filed with the Supreme Court of New Jersey [Docket No: 20,426], wherein I summarized that which I brought out in more detail in the Appellate Brief filing with the Appellate Division, Superior Court of New Jersey [Docket No: A-4349-80-T3].

In Trial Court, after I dismissed counsel I retained for the trials of March, 1981, I filed Motion under New Jersey Rules of Court for an extension of trials to hear findings which my counsel should have brought out, to hear caveat which was denied hearing, to bring forth evidence of perjury on material issues and other false statements of the adversaries. The intendment was in support

of Due Process but this was denied by the trial court judge at the hearing on my Motion on May 1, 1981 [Appendix 6a and 7a].

Where Federal defense was set up but not recognized in trial court, Supreme Court had jurisdiction where appellate court overruled defense [Carlson v. Washington (1913), 234 U.S. 103; 34 S.Ct. 717; 58 L.Ed. 1237].

Question of denial of due process was Federal Question which state supreme court had jurisdiction to decide, and its decision was subject to review by Supreme Court of the United States on certiorari [Guy v. Utecht, (CA 8 Minn. 1944), 144 F2d 913].

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To the Honorable Chief Justice
and Associate Justices of
The Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue, to review the final judgments of the Superior Court of New Jersey, entered in this case on October 6, 1982, certification having been denied without comment by the Supreme Court of New Jersey on January 17, 1983.

RELIEF SOUGHT

I hereby respectfully waive oral argument before the High Court and request disposition on the papers. In filing this Petition, may I state that the relief I seek is for a remand of this case to an appropriate court in New Jersey, so that the hearing which I requested as *pro se*, which was consistently denied by trial and appellate courts, be held.

Where trial court and appellate court ran counter to the Federal right which was raised on appeal for reargument, this Court has jurisdiction under §237, Judicial Code, to review the judgment. [Grannis v. Ordean, 234 U.S. 385, 394 (1913)]

STATEMENT OF THE CASE

The case is a probate matter which involves a litigious 1976 Will of the Estate of Fanny Green, where three heirs are beneficiaries, this petitioner and the two respondents, surviving children of the decedent.

The genesis of the court matter lies with the quasi-judicial municipal body known as the Planning Board of Emerson, N.J., where the respondents supported an application for their own conspired disposition of the real property of said estate, the house in which I was and am living.

It was not by prescribed rule of court that I received my due copy of said Will, but by the good graces of the Planning Board, and 18 months after the death of the decedent. Since all papers filed with the Board become public property, I also received copy of the conditional contract of sale of said premises.

This was the first public demonstration that the proponents of the litigious Will, the respondents, colluded and conspired to liquidate

the property without my knowledge and against my personal interest with regard thereto. This covert activity paralleled that which the respondents pursued to initiate a new Will for the decedent in the waning months of her life. The court record is crystal clear on this crucial point.

The principal element of conspiracy is an agreement between two or more persons to effect a wrong against or injury upon others [Neff v. World Publishing Co. (C.A. Neb. 1965) 349 F2d 235].

The application before the Planning Board was denied for the reason that their plan was unlawful, that is, contrary to the Zoning Code and the Municipal Land Use Act of New Jersey. A "civil conspiracy" involves a combination of two or more persons to perform an unlawful act.

At the conclusion of the Planning Board matter, I filed caveat in Superior Court, Hackensack, N.J., with an Order to Show Cause which issued. At the request of the judge

of the then Surrogate Court, a more comprehensive Order to Show Cause was filed and entered on July 28, 1978 [Appendix 3a]

It is this Caveat which the courts of this state have consistently refused to hear and it remains unheard till now.

There was a series of pre-trial hearings, during which time a second Order of the court was issued in supplement to the Caveat and this comprised, namely, the issues of Testamentary Capacity and Undue Influence of and on the decedent. The presiding judge retired before the trials of June 20/21, 1979, began.

The issues at these trials considered only two points: the timely filing of Caveat and required notice of probate to me [N.J. Rule 4:80-8], that is, within 60 days after probate.

The second presiding Surrogate Court judge ruled that my filing Caveat was late and that I did receive required notice by the above N.J. Rule of Court. This was a trial of error.

During the matter before the Emerson Planning Board and the trials of June 1979, I was

represented by a very able attorney. Even though he recognized the outstanding merits of this case, I knew that he did not have a chance to win for his client and his cause, for I had learned prior to the commencement of the trial that adversary counsel paid an *ex-parte* visit to and was received by the presiding judge for the trials began, that is, on June 19, 1979.

This act was counter to the disciplinary rule of the attorney and against the judicial code of the judge who received him. Here we had a matter of *ex-parte* adversary influence on the court which was a contributing factor of the resulting Trial of Error.

Yet, when I brought this out in the several of my appeals to the higher courts of this state and to the Ethics Committee of the New Jersey Supreme Court, total silence ensued. Never was there a question posed to me as to "How do I know this!"

I brought a closely related matter to this adversary *ex-parte* visit to the attention of

the Office of the Attorney General of this state but till now have not had the opportunity to bridge these related events in the court proceedings.

All my appeals to the higher courts of this state, including interloccutory appeals, were done *pro se* at the conclusion of the trials of June, 1979. I relieved my attorney under friendly terms for reasons which he understood, principally due to the cost of appellate process and because I had to answer in my own words to a grave *animus defamandi* of my person which adversary entered into testimony, the rebuttal and refutement of which was denied me by the court.

I filed Notice of Appeal with the Appellate Division, Superior Court, within required time permitted and proceeded in its preparation until the timely filing of the Appellate Brief and Appendices.

During the appellate tolling period my adversaries did not remain idle. I will not take the valuable space of this Petition to

describe all aspect of the harassment of me, except for one evident fact, where adversary attorneys employed the means of the trial court and the same judge to instigate a court process that was totally improper.

It is well known by bench and bar in the State of New Jersey, that once Notice of Appeal has been filed in the Appellate Division and the appeal is pending, jurisdiction over the case moves from trial court to the Appellate Division.

Yet, adversary attorneys filed motions in trial court directly, on the one hand they found a sympathetic and prejudicial judge, on the other hand it was an on-going harassment of my person.

The attorneys knew that if they wanted any action at the trial court level, they had to apply for leave to the Appellate Division for permission to move in the court below.

Several recalls to trial court had my arguments on its lack of jurisdiction to entertain any question because of improper proced-

ure brushed aside by the same judge.

The judge of this trial court went along with this harassment of me by entering an Order to the word as adversary attorneys prepared it.

It came to pass that adversary attorneys even filed motion in trial court to have me cited for Contempt of Court because I did not recognize the improper Order. I had several interloccutory appeals before the higher courts of this state until I was able to obtain a stay from Appellate Court on all activity promulgated by the adversaries in trial court, pending outcome of the appeal.

This kind of activity of adversary attorneys repeated itself throughout the period of time I represented myself as *pro se* as the record of this case demonstrates.

I bring this singled-out example to this High Court to show the oppressive nature to what a *pro se* is subjected, on the one hand by opposition attorneys, on the other hand as courts may condone.

Had I been an attorney in legal practice and not *pro se* representing myself, none of such charades would have taken place.

This example is one of several in the case at hand which demonstrates that a *pro se* is not in practice insulated from the desecration of Federal Equal Protection of the Law clauses and Rules of Court, the Law of our Judicial System.

The result of the Appeal from trial court was rendered on October 16, 1980, by the Appellate Division where it was ruled that my Caveat was timely filed and that I did not receive notice according to N.J. R. 4:80-8. The Opinion of Appellate Court concluded:

> "The judgment entered below is reversed. The matter is remanded for a pleanary hearing on the issues of undue influence and testimentary capacity. We do not retain jurisdiction."

Upon receipt of true copy of the Opinion, I filed Motion with Appellate Division for Clarification, wherein I presented the need that the "plenary hearing" has to entertain the elements of the filed caveat (Order to

Show Cause of July 28, 1978) in addition to the issues of testamentary capacity and undue influence. Motion was denied without comment.

This was the first of a long series of denials on the hearing of Caveat during the course of proceedings of this case, and until today the Caveat has not been heard.

The remanded trials took place on March 5 and 26, 1981, under the third presiding judge of Surrogate Court hearing this case.

For the retrials I decided to seek out an attorney which proved to be practically impossible due to the exorbitant retainer fees they requested. I did locate and engage one who accepted the case for a retainer fee of $2,500.00 which I was able to pay through the assistance of the New Jersey Bar Foundation Financing Plan that meant taking a bank loan for said amount at 17.75% interest.

The representation by this attorney proved to be a disaster for my just cause. It appeared to me that I was present in the courtroom "without counsel" while the opposition had two,

"theirs and mine". The lack of assistance of my trial counsel presents an important constitutional question warrenting by itself the granting of certiorari [Carnley v. Cockran, (Fla 1962), 369 U.S. 506; 82 S.Ct. 884; 8 L.Ed2d 70].

As the first trial proved to be a Trial of Error, the second trial was a Retrial of Error for additional reasons.

With jurisdiction restored at the trial court level, the trial became a trial *de novo*. The judge (third Surrogate judge on this case) confirmed this as such in his opening remarks.

In applying the notion of trial *de novo*, all issues prepresented by the Caveat [3a] and the second Order on Testamentary Capacity and Undue Influence were to have been heard (since the issues of timely filing of Caveat and Notice of Probate have been disposed of).

The attorney I retained for the retrials refused categorically to bring forth the issues of Caveat. On the other hand, and "hand

in hand", adversary attorney played to his advantage that the mandate received by trial court from appellate court was restricted to the issues of testimentary capacity and undue influence.

During the course of retrial, the Caveat was not heard. It was not a trial *de novo*. It was a mistrial.

Undue Influence was heard, and when one couples the testimony of the respondents/proponents of the contested Will of 1976 and that of this petitioner, from the trials of 1979 and 1981, there is an extraordinary agreement on the circumstances surrounding the relationship between respondents and petitioner and on the background in the conception of the litigious 1976 Will. The recorded testimony bares this out without question.

Yet the judge of retrial court, with all the overwhelming propounded evidence available up till then, refused to shift the burden of proof. In all kinds of litigation it is plain that where the burden of proof lies may be

decisive of the outcome [Speiser v. Randall, 357 U.S. 513, 525 (1957); Armstrong v. Manzo, 380 U.S. 545, 551 (1964)].

Beside being considered as another act of excessive jurisdiction, it is clear that his own personal will was exercised and not his judicial judgment.

The record demonstrates how the respondents had the opportunity to exert influence on the decedent. This is incontestable. There is no disagreement that a serious alienation of this petitioner by the proponents existed during the last two years of the decedent's life. The Appellate Court did recognize this situation in their 1980 Opinion. This unwarrented alienation is the cause and fundamental reason which explains the comportment of the respondents prior to the conception of the 1976 Will and since then.

The circumstances of their undue influence on the testatrix are textbook criteria. The only thing missing is physical coersive force or shotgun signature on the decedent.

The testimony describes how Joseph Green, the self-appointed executor of the contested Will, and Mary (Green) Stern, the respondents, propelled an action to see that the 1976 Will is conceived, prepared and executed. It is admitted by Joseph Green that he went to his own attorney for the writing of the Will.

Who was his attorney?

The name is Frank J. Planer, now well known in the State of New Jersey among legal and judicial circles. Frank Planer was a former law partner of the present counsel for the respondents. It is also a fact that during the pretrial hearings in 1978 (of the first trial), Frank Planer absconded these United States for South America and was accused of alleged embezzlement of his clients' trust funds over which he had gained control. The Supreme Court of New Jersey suspended his license to practice [78 N.J. 620 (1979); Appendix 4a].

Facts show how a benefaction was secured by the respondents in initiating proceedings for

the preparation of said Will. Facts show that Joseph actually read the Will at the time of its execution.

His reading was not to learn what was said but to learn how it pronounced his desires as he explained to Frank Planer well before the latter set his legal pen to the pre-conceived document.

The respondents succeded to exclude from the testatrix' society the natural beneficiaries of her bounty: her four grandchildren and the special bequests to me. The facts show how the 1976 Will was so worded as to give Joseph total discretionary power over the estate, something, which the record also shows, the decedent would not and did not do in her prior Will of 1959, at the time of her life when she was of sound mind, memory and understanding.

The respondents captured the disposition to exert influence on the decedent and to do so for improper purpose which was to change the decedent's natural testamentary intent to fit their own designs.

There is no room in this Petition for Writ of Certiorari to go into the preponderance of circumstances and all the facts that show that the retrial court erred by failing to raise the presumption of undue influence and failed to shift the burden of proof to the respondents and have them go forward, requiring of them more exacting proof of impeccable quality. The Appellate Court chose not to challenge the excesses of jurisdiction of the retrial judge.

The issue of Testamentary Capacity was very inadequately heard. The decedent was a typical case of *senile dementia* which is a progressive and incurable disease coming predominantly with old age. Mother died at the age of 87. I lived in her house and took care of her and all of her life needs during the last two years of her life. Her mental history from 1974 to 1976 is well recorded and includes corroborative hospital records that she was afflicted with arteriosclerotic cerebrovascular disease.

The attorney I engaged for the trials of March 1981 did little to bring medical expertise to support my case that Mother was not in any mental competant way to contrive a new Will in the months before she deceased. He failed to take deposition of the doctor, neurologist, who actually treated the decedent. Another neurologist, who never had Mother as a patient, never met her, wanted $1,000.00 "up front" for him to testify on the probability of the decedent's incompetency in retrospect of the time the 1976 Will was executed.

I could in no way pay that amount of money. While the running rate for medical expertise in this area of New Jersey was $100 per hour, the $1,000 meant that his time would have taken ten (10) hours (?).

From where this neurologist's office is located, it would have taken no more than 1/2 hour at the most to the courthouse. His testimony would not have taken more than one hour at the most, since courts generally give preference or priority to hear the doctor's

expertise and, properly so, the courts are conscious of the time/cost factor of professional court appearances. Members of the American Medical Association were aghast at this pre-required fee when I brought this matter to their attention.

In any case, the most important medical expert for these trials, a neurologist, was not heard, and this includes the lack of testimony, by deposition or otherwise, of the neurologist who treated the decedent.

Frustrated in the inadequacy of performance of the attorney I engaged, I located a competent neurologist on my own but it was too late with respect to the court procedure to engage him, whose cost for court appearance was well within the norm.

There was only one medical expert who my then attorney called for testimony, a psychiatrist who never met the decedent and who gave testimony on the basis of her hospital record. The trial judge delivered his own observation in his opinion at the trial.

In speaking of the single medical expert appearing, the judge stated:

> "However he stated very categorically and honestly that he was NOT UNABLE to give any opinion with reasonable degree of medical probability, that she (the decedent) was NOT COMPETENT at the time of the execution of this Will, April 15th, 1976."
> [emphasis added]

This statement of the judge appears in reference to the transcript connotated as T2-96-16/23, according to New Jersey rules of transcript reference.

The absence of testimony by neurologist of the record or on the record was well calculated by adversary attorney with cooperation of my attorney for these trials was intended to weaken my case with regard to the issue of Testamentary Capacity.

During the course of the retrials of March 1981, adversary attorney and respondent Joseph Green entered into the testimony another *animus defamandi* of my person which has no basis of truth, the purpose of which was to further influence the trial court in their favor.

The trial judge not only did not permit me to return to the witness stand in rebuttal and to refute the defaming statement with essential proof, but the judge actually added to his denial the statement: "what weight it would be given, what probative value it has" [from transcript: T-167-10].

Here the trial judge makes such a statement and still denies me the right to rebut and refute. How can this be other than a denial of Equal Protection and Due Process? The consideration of such false testimony by the court added to the set prejudice of that court.

There is no "hearing" within contemplation of Due Process when affected party is not afforded an opportunity to test, explain or refute and a finding without evidence is arbitrary and baseless. And this is what the retrial court demonstrated.

The fundamental requirement of Due Process is the opportunity to be heard which must be tailored to capacities and circumstances of those who are to be heard and should be granted

at a meaningful time and in a manner that is appropriate to the nature of the case. [U.S.C.A. Const. Amend. 14; Adams v. Wainwright, 512 F.Supp. 948 (1981); Birdwell v. Hazelwood School Dist. 491 F.2d 490 (1974); Royal Typewriter Co. v. N.L.R.B., 533 F.2d 1030 (1976); Grannis v. Ordean, 234 U.S. 385, 394 (1913).]

At the conclusion of the trials of March 1981 in Superior Court, Probate Part - Law Division, Hackensack, N.J., I relieved my counsel because of his grossly inadequate performance and proceeded *pro se* with a timely filing of Motion in trial court requesting a further hearing in extension of trials pursuant to New Jersey rules of court in order to correct a substantial right which shall not be disregarded by trial court before, during and after trial, to open judgment, take additional testimony, amend findings and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. All of this is sustained by the rules of court of the State of New Jersey.

Counsel which I had retained for the trials of March 1981 committed a disservice to his client and I wished to rectify his negligence and deficient performance among which was his failure to take deposition of an important witness beyond New Jersey jurisdiction (in another state) which would have demonstrated acts of perjury of the adversaries on an important material issue of the case.

A hearing on my Motion for an extension of trials was held on May 1, 1981 (transcript three). In an arbitrary act counter to the principles of the fundamental elements of due process, the trial judge refused any further consideration to have me heard. The judge brought the motion hearing to a rapid close. I was not even given the time to make my statement. I wanted to present findings of highly relevant material nature which should have been exposed during the trials, material which my then attorney failed to enter into the record. The trial court was again stacked against me and I was denied

the means to present the finding at the court level which is supposed to be the finder of facts. [Appendix 5a and 6a].

The central meaning of procedural due process is that the parties whose rights are to be affected are entitled to be heard [Vasquez v. Ferre, (D.C.N.J. 1975), 405 F.Supp. 815]. But such rulings of a Federal Court of the United States apparently does not impress a trial court judge in my case.

Because the motion hearing was eclipsed, I decided to send the judge my written prepared statement which I was not permitted to render in court (adversary counsel was served).

The reply of the judge, sent to me in letter form, simply restated that my only recourse was appeal to the Appellate Division. This recourse was something I wanted to avoid for reason of cost and time. It is the trial court which is the finder of facts and not the appellate court. [Appendix 7a].

I filed Notice of Appeal with the Appellate Division, Superior Court.

Again, while the appeal was pending, adversary counsel tried the same charade as was attempted during the first appeal to the Appellate Division after the first trials. He applied to the trial court in search of an Order to liquidate the estate under the 1976 Will even while said Will remained in litigation and while the Appeal was pending and while the entire jurisdiction over the case was with the Appellate Division.

From experience of the former harassments, I called for an Emergent Application with the Appellate Division and adversary counsel and I appeared before the circuit appellate judge, the result of which dispelled the adversary improper motion in trial court.

In my Appeal to the Appellate Division, I had requested Oral Argument, by the rules of court. Eventually, oral argument was scheduled for September 13, 1982, but it proved to be a mirror image of the Motion Hearing of May 1, 1981, in trial court, in that I was not permitted to render my full statement.

I had meticulously prepared my argument well contained within the time limits set by rule of court. I was not permitted to render my statement allowed me by rule.

As I did after my Motion Hearing in trial court was squashed, I transmitted copy of my prepared written statement to the two appellate judges who presided at the oral argument.

To no avail, this Appellate Court rendered its decision and simplistic Opinion on October 6, 1982 [Appendix 2a].

I had to turn to the Supreme Court of New Jersey for relief, by filing Petition for Certification. In my appeal to each of the New Jersey appellate courts I had asked for a basic remand to trial court so that I could present findings which should have been brought out in trial court, have the hearing which the lower courts denied me, present evidence of perjury of the adversaries on matters highly material to this case.

The Supreme Court of New Jersey denied my Petition for Certification without comment.

The highest court of New Jersey denied Certification on January 17, 1983. On January 20, 1983, I caused Notice to be served upon adversary counsel that I shall file Petition for Writ of Certiorari in The Supreme Court of the United States. Said Notice was also transmitted to the higher courts of this state.

Irrespective of the fact that adversary counsel was served Notice, I was served papers for a scheduled hearing in Superior Court, Hackensack, N.J., for February 10, 1983, in an act to liquidate said estate under the fraudulent 1976 Will.

On January 27, 1983, I filed Motion for Stay with said Superior Court. On January 31st, I caused to be sent an Application for Stay to the Supreme Court of the United States. The High Court placed the Application on hold until the fulfillment of Rule 44.4.

Since I learned that adversary motion and my motion were to be heard together on the February 10th date, I requested a conference hearing with the judge and adversary counsel

present. The conference was held on February 7th in the judge's court. My Motion for Stay was denied. In order for jurisdiction to move from New Jersey to the Supreme Court of the United States, I had to request Emergent Application in the Appellate Division and file Motion for Leave to Appeal the court below's denial. The Supreme Court of the United States waived my need to go to the New Jersey Supreme Court.

Emergent Application was granted so that a conference was held in chambers of an appellate judge with adversary counsel present on the following day, February 8th. My Motion for Leave to Appeal was denied. This required a three judge ruling. Jurisdiction was then able to move to Washington.

The Application for Stay was immediately filed with number assigned as A-686, on the same day, February 8th, and was transmitted to the circuit Justice for New Jersey.

On February 9th the Honorable Mr. Justice William J. Brennan, Jr. denied Application.

Adversary attorney's Motion was heard on February 10, 1983, from which an Order was issued which had raised some discrepancies.

Since the 17th of January 1983, the entry of the New Jersey Supreme Court's denial of Certification, my effort to proceed with the arduous task of preparing for the Petition for Writ of Certiorari had been seriously diluted and time eroded by immediate requirements to respond, in writing and in court, to activities instigated by adversary counsel in Superior Court.

On March 4, 1983, I caused an Application for Extension of Time to be sent to the Supreme Court of the United States under Federal Statute 28 U.S.C. §2101(c)[A-745].

On March 9, 1983, the Honorable Mr. Justice Brennan granted said Application extending my time to and including June 10, 1983 [Appendix 8a].

ARGUMENT

It was in February, 1981, when the Very Honorable Chief Justice of the Supreme Court of the United States made what appeared to be a justifiable public remark what was heard throughout the Land when he stated:

> *"The judicial process becomes a mockery of justice, if it is forever open to appeals and retrials of errors."*

More recently, at an American Bar Association meeting, the Chief Justice brought into public view how overloaded with cases the High Court is. The two prouncements are related.

In my study and research at the Law Library, Madison Building of the Library of Congress, I was impressed by the number of cases filed annually in recent years and depressed by the fraction of cases heard by the High Court.

In having had to file two Applications [A-686 and A-745 (cited herein)] earlier this year with the Supreme Court of the United States, it was necessary for me to appeal for Leave to Appeal with the Appellate Division Superior Court, because of jurisdictional

requirements to have A-686 heard by the High Court. A second occasion arose for me to go again to the Appellate Division on a subsequent matter of this case. Even though the route was clear for me to transfer jurisdiction again to the Supreme Court of the United States, I did not do so, instead, I chose to concentrate on this present Petition.

The point I am making here is that in each case the appellate judges made the remark that I had "very little chance" if any at all, that my Petition for Writ of Certiorari would have "very low priority" and "it would be a waste of time", or another statement "you don't have the slightest chance".

I further noted during my research in the Library of Congress, that, in recent years, with the exception of Habeas Corpus Writs applied for by *pro se* petitioners, none of the *pro se* Petitions for Writ of Certiorari were granted. It is possible that I may have missed some or one which was granted, but then that would certainly have been an exception.

Yet, how does a *pro se* prevent a travesty of justice in the state courts? How does a *pro se* party prevent a mockery of judicial process about which the Chief Justice of this High Court related in February 1981?

When appellate judges of a state court system insist that the judgment of state courts are the end of the road for an appellant, how can the breakdown of Federal guarantees of Due Process and Equal Protection under the Law be prevented?

Res judicata is a question of state law. Yet such imposing proceedings and judgments cannot be *res judicata* against anyone until the deprived party whose rights are denied is heard. There is no difference on this point whether the case be a civil or criminal matter. If, in practice, there be a difference, then the guarantees we speak of are or become subordinate to the whims of the individual of the bench.

Presumptions of the courts below cannot be indulged to supply a proper or valid subject-

matter or jurisdictional fact where the evidence and record in the case show the contrary. To aggravate this indulgence the trial court and appellate courts of this state deny my *pro se* appeals to be heard in special hearing in extension of the trials as this Petition sets forth.

In Western Life Idemnity Co. v. Rupp, [235 U.S. 261, 273 (1914)], the Honorable Justice Stone submitted the best argument for the present case when he stated:

> *"But when the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in litigation to ascertain whether the petitioner whose rights have thus been adjudicated has been afforded such opportunity to be heard as are requisite to the due process which the Constitution prescribes."*

The Supreme Court of New Jersey exercised its judicial discretion, without comment, by not granting my Petition for Certification; the Appellate Division of Superior Court ascribed to the judgments of the court below,

thus ascribing to trial court's denial of due process which denied me to be heard according to rule of court of this state even though I invoked Federal questions in each of the court levels. This case exemplifies a bare fact that a *pro se* does not have equal protection under the laws.

Citizens who are *pro se* before the courts belong to a silent but growing minority, forced into its class by their inability to pay the legal fees demanded by attorneys.

Smith v. Bennett, (1960) 365 U.S. 708; 81 S.Ct. 895; 6 L.Ed.2d 39, brought out the realistic point that there can be no equal justice where the kind of a trial a man gets depends on the amount of money he has. This pecuniary force applies to civil trials as well as to criminal trials.

Equal Protection of or under the Laws is not only a right merely of a group of individuals, or a body of persons according to their numbers, but is a right of the individual [Mitchell v. U.S. (1941) 313 U.S. 80;

61 S.Ct. 873; 85 L.Ed2d. 1201].

When we speak of "the laws" we not only mean State and Federal statutory and constitutional laws, but we also have to include the Rules of Court which represent the laws set up by the courts to which all litigants or their legal representatives are required to follow in the prosecution of a case. Just as we have civil and criminal codes, the Rules of Court are judicial code to which bench, bar and *pro se*'s alike must abide.

State and Federal Judicial Authorities permit citizens, or others under their jurisdictions, to represent themselves in court. The *pro se* is required to submit himself to the Rules of Court just as a licensed attorney.

In the present case the record shows many infractions of the rules by adversary attorneys and court with detrimental intent vis-a-vis my person, infractions which are repugnant to the Equal Protection and Due Process clauses guaranteed by the Fourteenth Amendment and by the several statutes at law.

The concepts of "Equal Protection of Laws" and "Due Process of Law", though not always interchangeable, are not normally exclusive. Discrimination may be so unjustified as to be violative of Due Process, and this is what the case at hand presents.

Why should it be permitted when state court, by its sheer will, establishes *res judicata* of a case while denying a *pro se* defendant the right to present evidence that, without any doubt, would deny said courts its will to force a judgment contrary even to all the evidence which had already been presented?

A logical reason is the following: Had I been allowed the hearing in extension of the March 1981 trials, I would have produced evidence and material findings, which, when coupled with the evidence and testimony of the trials of 1979 and 1981, the state courts could not have submitted to the judgments they produced.

As in the case of Hansberry v. Lee, 311 U.S. 32 (1940), in the present case of

the Estate of Fanny Green, there was fraud which can be imputed to the respondents and their counsel which the courts below refused to take into consideration in rendering their judgments, judgment which offend the Fourteenth Amendment.

Fraud is a criminal act by various degrees. When state courts ignore the charges of fraud and will not accept nor hear the support of those charges, those courts are actively contributing to the crime and this not only depresses the dignity of the court and its immunity but destroys the essence of justice upon which our society depends.

An old California case [Ex parte Chetwood, (1897) 165 U.S. 443; 17 S.Ct. 385; 41 L.Ed. 782] is applicable today as it was then. While certiorari has ordinarily been used merely as an auxiliary process, yet, when the circumstances imperatively demand it, the writ may be allowed by the Supreme Court, as at common law, to correct excesses of jurisdiction and in furtherance of justice.

The refusal of trial court to allow a *pro se* defendant in a civil matter to present facts at an evidentiary hearing on a motion for extension of trials which would bear significantly on the outcome of litigation violates the defendant's right of fundamental due process and is repugnant to the Fourteenth Amendment by way of the Fifth Amendment.

To foreclose a party the right to refute and rebut statements of the adversaries, to allow unchallenged allegations of the adversaries to remain unchallenged deliberately, to inhibit a *pro se* defendant to present factual material highly relevant to his defense which would expunge their false testimony and perjured statements is manifest of a predisposed judgment of the court.

If courts remain true to the ancient traditions of justice, this case is to be concluded in a way that permits truth to triumph. This has not been done in the case at hand. I was and am entitled, even as *pro se*, to present evidence which has been repressed,

evidence repressed on the one hand by culpable negligence of my former counsel for the 1981 trials and, on the other hand, by the courts who deny my right to be heard as *pro se*. Law and justice require it. Too much time has been wasted in an effort to provide a summary dispostion of this case that should not be disposed of that way.

Based on the Constitution of the State of New Jersey (1947), Art 1, §5, the case of ADA Financial Service Corp. v. State of New Jersey, 174 N.J. Super 337 (1979) brought forth a maxim which the courts here should have applied to this case:

> *Equal protection of the laws means that no person or class of persons shall be denied protection of the law as enjoyed by other persons or class of persons under similar conditions and circumstances, in their lives, liberty and property, and in the pursuit of happiness, both as respects privileges conferred and burdens imposed.*

Further based on the New Jersey Constitution citation, *supra*, stemming from the case of Washington Nat. Ins. Co. v. Board Review of N.J. Unemployment Comp. Comm., 1 N.J. 545 (1949)

The constitutional limitations in U.S.C.A. Const. Amend. 14 and in the due process and equality clauses of the State (of New Jersey) Constitution safeguard the fundamental rights of persons and property against arbitrary and oppressive state action.

The courts of the State of New Jersey are a state institution.

Holy Name Hospital v. Montroy, 158 N.J. Super 181 (1977) brought out an interesting point that:

State (of New Jersey) guarantees of due process and equal protection may be more demanding and are to be more broadly construed than those of Federal Constitution.

As defendant/caveator in this case, I have in no way seen the guarantees "more demanding" or "more broadly construed" that the above annotation implied.

In the Matter of Cram's Will [(Mont. 1980), 606 P.2d 145] we see a case where a maxim was brought forth:

Private conduct abridging individual rights does no violence to equal protection clauses unless the state in any of its manifestations has been found to have become involved in such conduct to a significant extent.

On the one hand there was this *ex parte*

visit between adversary counsel and the judge of the 1979 trials in chambers the day before those trials began.

Then the record shows that in each of the trials, 1979 and 1981, an entry into the court record by adversary testimony of unsubstantiated *animus defamandi* of my person was made.

The record shows that the judge of the first trials eclipsed my right of rebuttal and refutement.

The second trials in March 1981 with the new *animus defamandi* against my person had the court deny my right of rebuttal and refutement and my right to confront the accuser by necessary testimony.

In non-criminal proceedings the Supreme Court of the United States has required a place of trial with litigant contacts sufficient to satisfy traditional notions of fair play and substantial justice. [International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)]. Whether a given practice is so unfair as to deny due process is always a

question of Federal constitutional law. [Cronnon v. State of Ala., 557 F.2d 472 (1977)]

Not only would my rebuttal and refutement have demonstrated the inventiveness of such false testimony, but solid evidence would have dispelled those fabrications from becoming encrusted in the minds of those of the courts.

These personal attacks by the respondents and their attorney were so designed as to influence the court with intent to abase my credibility. Their scheme apparently worked and since the courts denied my right of rebuttal and refutement, the allegations were then accepted as fact. From this point there was a never ending cascade of denials of my fundamental rights up till the writing and filing of this Petition for Writ of Certiorari.

My *pro se* Motion to extend the trials of March 1981 was denied [Appendix 6a]. My several appeals to the higher courts of New Jersey were to no avail. The hearing for extension of trials requested at each of the three court levels of this state would verily

have covered many facets of missing testimony which is necessary to be brought forth, testimony to show the false testimony and perjury of the respondents which would demonstrate in all clarity the fraudulence of the litigious Will of 1976, and with emphasis on material fact

By the cataract of denials to having me heard as defendant and *pro se* party in this case, the courts of New Jersey have in their manifestations become involved in such conduct to a significant extent and, as a state institution, have done violence to the Equal Protection and Due Process clauses of both State and Federal Constitutions vis-a-vis my person, my cause and the interest that justice demands.

Rule 52 of this High Court states that all process of this Court shall be in the name of the President of the United States.

It is for this reason, even though there is a separation of Executive and Judicial Branches in our democratic society, that I have caused to be served upon the President copies of this Petition for his information since

he, as well as previous Presidents, has shown concern for human rights.

The United States has subscribed to numerous treaties, compacts, covenants, agreements and conventions which have underlined the inherent dignity of human rights and fundamental freedoms of the individual.

One, for example, is the Helsinki Agreement of 1975 to which President Gerald Ford placed his signature as High Representative of the participating United States of America. The covenent became the Law of the Land.

Section VII of this Agreement expresses individual human rights. The participating nations confirm "*the right of the individual to know and act upon his rights and duties in this field*". It further states:

> "*The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their ligitimate interests in this sphere.*"

As *pro se* I am part of this growing national minority, barely tolerated by the courts, inhumanely subjected to attorney's improprieties and to the whims of excesses of jurisdiction by the courts.

We have a common right, *res*, or identical interest to expect a Due Process minimum which is any reasonable procedure appropriate to the circumstances which protect an individual f a i r l y from arbitrary action of the courts. Procedures must be provided that are adequate to safeguard against infringement of constitutionally protected rights -- rights which we value most highly and which are essential to the workings of a free society.

Due Process is violated every time when error constitutes a failure to observe that fundamental fairness is essential to the very concept of justice.

Are *pro se* parties to a court litigation covered by the guarantees of Due Process and Equal Protection of the Law clauses as are adversary parties to the litigation who are

not *pro se?*

This is a Federal Question of substance which may not have heretofore received pronouncement in the determination of the Supreme Court of the United States.

SUMMARY

The case at hand has been going on since five years. This is principally due to the extended waiting period of the appellate process in the State of New Jersey.

The oral Opinion of the trial court judge, from which I brought appeal to the Appellate Division in 1981, cannot have any judicial merit since it was formed from unrendered testimony which was hindered and obstructed from being presented in trial and the further denial of my rights to an evidentiary hearing which I requested as *pro se* subsequent to the trial.

The written Opinion of the Appellate Court is lacking. The two cases it cites [Appendix 2a] are hardly applicable to this case.

In the Matter of the Estate of Fanny Green, there was:

---a corruption of the court of the first instance, but no one of the courts will hear me;

---perjury on material issues, but no one of the courts will hear me;

---other false testimony by the adversaries of significant relevant value, but the courts will not hear me;

---harassment by the adversaries with their attorneys, but the courts will not hear me.

---denial of my right of rebuttal and refutement by each court level; the courts will not hear me;

---denial by the courts to hear the legitimate Caveat filed on July 28, 1978 and the courts have not heard it;

---denial of the courts to allow me as *pro se* to present evidence in support of my cause, but the courts will not hear me; indeed, there was--

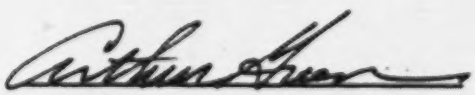
---violence of the Fourteenth Amendment, by way of the Fifth Amendment, to the Constitution of the United States and of equivalent provisions of the Constitution of the State of New Jersey.

The Supreme Court of the United States is the judicial body of jurisdiction which can have me heard in the appropriate lower court by Order of Remand of the High Court.

As in Henry v. City of Rock Hill, (S.C. 1964) 376 U.S. 776; 84 S.Ct. 1042; 12 L.Ed2d 79, the Supreme Court's remand of the case to state tribunal for further consideration did not amount to a final determination on merits but rather indicated that the Supreme Court found such decision sufficiently decisive to compel re-examination of case.

For all the foregoing reasons, I pray that the Supreme Court of the United States will grant my Petition for Certiorari.

Respectfully Submitted,



Arthur Green, *pro se*
182 Linwood Avenue
Emerson, New Jersey
07630

(201) 262-6214

Dated: May 31, 1983

Supreme Court of New Jersey
C-301 September Term, 1982
20,426

In the Matter of the Estate of: FANNY GREEN, Deceased	:	On Petition for Certification
(Arthur Green, Petitioner)	:	

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-4349-T3 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 11th day of January, 1983.

/s/ Stephen W. Townsend
Clerk

Filed
Supreme Court
Jan. 17, 1983
/s/ Clerk

Superior Court of New Jersey
Appellate Division
A-4349-80-T3

In the Matter of the Estate of
FANNY GREEN, DECEASED

Argued: September 13, 1982
Decided Oct. 6, 1982
Before: Judges King and McElroy

On Appeal from Two Judgments of the Superior Court of New Jersey, Law Division - Probate Part, Bergen County

Arthur Green, Pro Se, argued the cause for appellant

Herbert L. McCarter argued the cause for respondent (Jacobs, McCarter & Pisarri, attorneys).

PER CURIUM

The judgment of the Law Division is affirmed for the reasons stated in the oral opinion of Judge Dalton on March 26 and May 1, 1981. See In re Estate of Churik, 165 N.J. Super.1 (App. Div. 1978), aff'd 78 N.J. 563 (1979); In re Blake's Will, 21 N.J. 50 (1956).

Original Filed
Oct. 6, 1982
Elizabeth McLaughlin
Clerk

CAVEAT (filed 7/28/78)

Order to Show Cause (in relevant part):

(a) Why a temporary administrator for the estate should not be appointed pending resolution of the issues set forth in subparagraphs (b) to (d) hereof.

(b) Why the said Joseph Green whould not be restrained and enjoined from entering into any agreements or contracts with reference to the sale of 182 Linwood Avenue, Emerson, (N.J.) without the written approval of Mary Green Stern and Arthur Green, children of the decedent, and holders of a one-third interest in the residuary extate under the provisions of paragraph Fifth of the decedent's last will and testiment dated April 15, 1976, and, in the case of Arthur Green, holder of a right of first refusal as provided in paragraph Seventh under the decedent's last will and testament dated January 7, 1959, and, further, from agreeing to pay, extend or give real estate commissions in respect of any such arrangement or sale binding upon the estate, Mary Green Stern or Arthur Green;

(c) Why said Joseph Green should not be ordered to pay and held accountable for all losses, damages, claims, fees, expenses, costs and judgments of or against the Estate, due to or arising out of a certain sale agreement and commission agreement dated January 31, 1978 and from any other actions or inactions resulting in unnecessary cost or expense to the Estate and its beneficiaries;

(d) Why the judgment of the Bergen County Surrogate's Court admitting an alleged will of the decedent dated April 15, 1976 to probate, should not be set aside and the decedent's will dated January 7, 1959 admitted to probate.

SUPREME COURT OF NEW JERSEY
Disciplinary Matters
[78 N.J. 620 (1979)]
ORDER

In the Matter of
FRANK J. PLANER, an attorney at law.

December 6, 1978, The Disciplinary Review Board having filed a report with the Court recommending that FRANK J. PLANER of Hackensack be temporarily suspended from the practice of law pursuant to R. 1:20-3(i), and good cause appearing:

It is ORDERED that FRANK J. PLANER be temporarily suspended from the practice of law, effective immediately, and until further notice of the Court: and it is further

ORDERED that FRANK J. PLANER show cause before this Court on Tuesday, January 9, 1979 at 10:00 a.m. in the Supreme Court courtroom, State House Annex, Trenton, why the temporary suspension should not be continued pending final disposition of the complaints against him before the Bergen County Ethics Committee, and it is further

ORDERED that Colette Coolbaugh, Esq., or her designee, present this matter to the Court; and it is further

ORDERED that FRANK J. PLANER be and hereby is restrained and enjoined from practicing law during the period of his suspension; and it is further

ORDERED that respondent comply with all the regulations of the Disciplinary Review Board governing suspended, disbarred or resigned attorneys; and it is further

ORDERED that a true copy of this order to show cause be served upon the respondent within five days of the date hereof.

JACOBS, McCARTER & PISARRI, P.A.
5 Atlantic Street
Hackensack, New Jersey 07601
(201) 342-3038
Attorneys for Joseph Green
and Mary Stern

Superior Court of New Jersey
Law Division - Bergen County
Probate Part

IN THE MATTER OF THE ESTATE OF
FANNY GREEN, DECEASED

Civil Action

ORDER

This matter being heard before the Honorable Thomas F. Dalton, in the presence of Jacobs, McCarter & Pisarri, P.A., attorneys for Joseph Green and Mary Stern, Herbert L. McCarter, Esq. appearing, and John J. D'Anton, Esq., attorney for Arthur Green, and the Court having heard and considered the sworn testimony and documentary evidence admitted in this matter,

IT IS, on this 4th day of May, 1981,

ORDERED, that the Judgment of the Surrogate Court of Bergen County, admitting to probate the Will of Fanny Green, dated April 15, 1976, is hereby affirmed; and,

IT IS FURTHER ORDERED, that the Order to Show Cause, filed by Arthur Green is hereby dismissed; and,

IT IS FURTHER ORDERED, that Letters Testamentary be issued to the Executor, Joseph Green,

[The rest of this Order has to do with the discharge of the temporary Administrator c.t.a. and the legal fees of attorneys.]

/s/Thomas F. Dalton
J.S.C.

JACOBS, McCARTER & PISARRI, P.A.
5 Atlantic Street
Hackensack, New Jersey 07601
(201) 342-3038
Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
Law Division-Bergen County
Probate Part

IN THE MATTER OF THE ESTATE
OF FANNY GREEN, DECEASED

Docket No. L-38989-79

Civil Action

ORDER

This matter being heard before the Honorable Thomas F. Dalton on the 1st day of May, 1981, in the presence of Jacobs, McCarter & Pisarri, P.A., attorneys for plaintiffs, Herbert L. McCarter, Esq., appearing, and Arthur Green, appearing pro se, and the Court having read and considered the moving papers filed herein, and having heard and considered the argument of counsel, and for good cause having been shown;

IT IS, on this 4th day of May, 1981,

ORDERED, that the Motion of Arthur Green, pro se, requesting a new trial, is hereby denied.

/s/ Thomas F. Dalton
J.S.C.

A TRUE COPY

/s/ Mildred Bellfalto
Special Probate Clerk

SUPERIOR COURT OF NEW JERSEY
Law Division-Bergen County

Thomas F. Dalton
Judge

Court House
Hackensack, N.J.
07601

Mr. Arthur Green
182 Linwood Avenue
Emerson, New Jersey 07630

5/13/81

Re: In the Matter of the Estate of
Fanny Green, deceased.
Docket No. L-38989-79

Dear Mr. Green:

I received, what is entitled by you as, "Notice of Complaint" in connection with the above captioned matter.

As you know, this matter was tried before me at a full plenary trial, at the close of which I entered a judgment against you. Subsequently, you filed a motion for a new trial and a hearing was held by this court on May 1, 1981. At the conclusion of the hearing, I entered an Order denying your motion for a new trial and advised you at that time that if you still feel agrieved by my ruling, your remedy was by appeal to the Appellate Division.

No further hearings will be scheduled by this court on the trial level and I therefore suggest, if you are still dissatisfied, that you pursue your legal rights to further review in the Appellate Courts.

Very truly yours,

/s/ Thomas F. Dalton, J.S.C.

CC: Herbert L. McCarter, Esq.
Jacobs, McCarter & Pisarri, P.A.

Mr. Clark, Surrogate Clerk

SUPREME COURT OF THE UNITED STATES

No. A-745

ARTHUR GREEN,

PETITIONER,

v.

JOSEPH GREEN, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION OF THE APPLICATION OF PETITIONER,

IT IS ORDERED THAT THE TIME FOR FILING A PETITION FOR WRIT OF CERTIORARI IN THE ABOVE-ENTITLED CAUSE BE, AND THE SAME IS HEREBY, EXTENDED TO AND INCLUDING

JUNE 10, 1983.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 9th

day of March, 1983